

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 119

### SENATE BILL NO. 2067

(Judiciary Committee)

(At the request of the Labor Commissioner)

### HUMAN RIGHTS COMPLAINT FILING

AN ACT to amend and reenact section 14-02.4-19 of the North Dakota Century Code, relating to the time limitations for filing human rights complaints in district court.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-02.4-19 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-19. Actions - Limitations.** Any person claiming to be aggrieved by a discriminatory practice with regard to public services or public accommodations in violation of this chapter may file a complaint of discriminatory practices with the department or may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed or in the district in which the person would have obtained public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing. Any person claiming to be aggrieved by any discriminatory practice other than public services or public accommodations in violation of this chapter may file a complaint of discriminatory practice with the department or may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to the practice are maintained and administered, or in the district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three hundred days of the alleged act of wrongdoing. ~~The~~ If a complaint of a discriminatory practice is first filed with the department, the period of limitation for bringing an action in the district court is tolled while the complaint is pending with ninety days from the date the department issues a written notice to the complainant that administrative action on the complaint has concluded.

Approved March 13, 2003

Filed March 13, 2003

## CHAPTER 120

### HOUSE BILL NO. 1083

(Judiciary Committee)

(At the request of the Labor Commissioner)

## HUMAN RIGHTS AND HOUSING INFORMATION CONFIDENTIALITY

AN ACT to amend and reenact sections 14-02.4-21, 14-02.5-22, and 14-02.5-46 of the North Dakota Century Code, relating to confidential information obtained under the human rights and housing discrimination laws.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-02.4-21 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-21. Records exempt.** A complaint ~~received by~~ filed with the department under this chapter is an open record. Information obtained during ~~any~~ an investigation conducted by the department under this chapter is exempt from section 44-04-18 before the institution of any judicial proceedings or administrative hearing relating to the complaint under this chapter or before the administrative closure of a complaint by the department. The department may disclose to the complainant or the respondent, or a representative of the complainant or the respondent, information obtained during an investigation if ~~determined~~ deemed necessary by the department for securing an appropriate resolution of a complaint. The department may disclose ~~to federal officials~~ information obtained ~~under this chapter~~ during an investigation to a federal agency if necessary for the processing of complaints under an agreement with the agency. ~~The department may not disclose anything said or done as part of the informal negotiation or conciliation efforts relating to a complaint under this chapter except to the federal equal employment opportunity commission as needed for proper processing and closure. Individually identifiable health information obtained during an investigation may not be disclosed by the department except to a federal agency if necessary for the processing of complaints under an agreement with the agency. Statements made or actions taken during conciliation efforts relating to a complaint under this chapter may not be disclosed by the department, except to a federal agency if necessary for the processing of complaints under an agreement with the agency, and may not be used as evidence in a subsequent proceeding under this chapter without the written consent of the parties to the conciliation. A conciliation agreement is an open record unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Investigative working papers are exempt from section 44-04-18.~~

**SECTION 2. AMENDMENT.** Section 14-02.5-22 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.5-22. Conciliation.**

4. The department shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the department, to the extent feasible, engage in conciliation with respect to

the complaint. A conciliation agreement between a respondent and the complainant is subject to departmental approval. A conciliation agreement may provide for binding arbitration or another method of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.

2. ~~A conciliation agreement is public information unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Statements made or actions taken in the conciliation may not be made public by the department or used as evidence in a subsequent proceeding under this chapter without the written consent of the parties to the conciliation.~~

**SECTION 3. AMENDMENT.** Section 14-02.5-46 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.5-46. Records exempt.** A complaint filed with the department under section 14-02.5-18 is an open record. Information obtained during an investigation conducted by the department under this chapter is exempt from section 44-04-18 ~~prior to~~ before the institution of any judicial proceedings or administrative hearing relating to the complaint under this chapter or before the administrative closure of a complaint by the department. The commissioner department may disclose to the complainant or the respondent, or representatives of the complainant or respondent, information obtained ~~under this section during an investigation~~ if deemed necessary by the ~~commissioner~~ department for securing an appropriate resolution of a complaint. The department may disclose information obtained during an investigation to a federal agency if necessary for the processing of complaints under an agreement with the agency. Individually identifiable health information obtained during an investigation may not be disclosed by the department except to a federal agency if necessary for the processing of complaints under an agreement with the agency. Statements made or actions taken during conciliation efforts relating to a complaint under this chapter may not be disclosed by the department, except to a federal agency if necessary for the processing of complaints under an agreement with the agency, and may not be used as evidence in a subsequent proceeding under this chapter without the written consent of the parties to the conciliation. A conciliation agreement is an open record unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Investigative working papers are exempt from section 44-04-18.

Approved March 25, 2003  
Filed March 25, 2003

**CHAPTER 121****HOUSE BILL NO. 1081**

(Judiciary Committee)

(At the request of the Labor Commissioner)

**HOUSING DISCRIMINATION LAW EXEMPTION**

AN ACT to amend and reenact subsection 2 of section 14-02.5-09 of the North Dakota Century Code, relating to dwellings exempt from certain provisions of the housing discrimination laws.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 2 of section 14-02.5-09 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Sections~~ Section 14-02.5-02 and sections 14-02.5-04 through 14-02.5-08 do not apply to the sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other, if the owner maintains and occupies one of the living quarters as the owner's residence.

Approved March 20, 2003

Filed March 20, 2003

## CHAPTER 122

### HOUSE BILL NO. 1267

(Representatives Keiser, Kreidt, Porter)  
(Senators Espegard, Wardner)

## MEDICAL CARE LIABILITY OF SPOUSES

AN ACT to amend and reenact section 14-07-08 of the North Dakota Century Code, relating to the liabilities of a husband and wife for medical care debts.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 14-07-08 of the North Dakota Century Code is amended and reenacted as follows:

**14-07-08. Separate and mutual rights and liabilities of husband and wife.**

The separate and mutual rights and liabilities of a husband and a wife are as follows:

1. Neither the husband nor the wife as such is answerable for the acts of the other.
2. The earnings of one spouse are not liable for the debts of the other spouse, and the earnings and accumulations of either spouse and of any minor children living with either spouse or in one spouse's custody, while the husband and wife are living separate from each other, are the separate property of each spouse.
3. The husband and wife are liable jointly and severally for any debts contracted by either, while living together, for necessary household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children.
4. The separate property of the husband or wife is not liable for the debts of the other spouse but each is liable for their own debts contracted before or after marriage.

Approved March 25, 2003

Filed March 25, 2003

## CHAPTER 123

### HOUSE BILL NO. 1072

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

## UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT

AN ACT to create and enact a new chapter to title 14 of the North Dakota Century Code, relating to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act; to amend and reenact section 14-07.1-06 of the North Dakota Century Code, relating to penalties for violation of a protection order; to repeal section 14-07.1-02.2 of the North Dakota Century Code, relating to foreign domestic violence protection orders; to provide a penalty; and to provide for application.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>57</sup> **SECTION 1. AMENDMENT.** Section 14-07.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**14-07.1-06. Penalty for violation of a protection order.** Whenever a protection order is granted under section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony. ~~Violation of a foreign protection order entitled to full faith and credit recognition under section 14-07.1-02.2 is a class A misdemeanor. A second or subsequent violation of such an order is a class C felony.~~

**SECTION 2.** A new chapter to title 14 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** In this chapter:

1. "Foreign protection order" means a protection order issued by a tribunal of another state.
2. "Issuing state" means the state whose tribunal issues a protection order.
3. "Mutual foreign protection order" means a foreign protection order that includes provisions issued in favor of both the protected individual seeking enforcement of the order and the respondent.
4. "Protected individual" means an individual protected by a protection order.

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<sup>57</sup> Section 14-07.1-06 was also amended by section 3 of Senate Bill No. 2329, chapter 105.

5. "Protection order" means an injunction or other order, issued by a tribunal under the domestic violence or family violence laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual. The term includes an injunction or other order issued under the antistalking laws of the issuing state.
6. "Respondent" means the individual against whom enforcement of a protection order is sought.
7. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.
8. "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a protection order.

#### **Judicial enforcement of order.**

1. A tribunal of this state shall enforce the terms of a valid foreign protection order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. A tribunal of this state shall enforce a valid foreign protection order issued by a tribunal, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. A tribunal of this state may not enforce an order issued by a tribunal that does not recognize the standing of a protected individual to seek enforcement of the order.
2. A tribunal of this state shall enforce the provisions of a valid foreign protection order which governs custody and visitation. The custody and visitation provisions of the order must have been issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.
3. A protection order is valid if it:
  - a. Identifies the protected individual and the respondent;
  - b. Is currently in effect;
  - c. Was issued by a tribunal that had jurisdiction over the parties and matter under the law of the issuing state; and
  - d. Was issued after the respondent was provided with reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the issuing of the order, in a manner consistent with the rights of the respondent to due process.

4. A person authorized under the law of this state to seek enforcement of a foreign protection order establishes a prima facie case for its validity by presenting an order valid on its face.
5. Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.
6. A tribunal of this state may enforce the provisions of a mutual foreign protection order which favor a respondent only if:
  - a. The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and
  - b. The tribunal of the issuing state made specific findings in favor of the respondent.

### **Nonjudicial enforcement of order.**

1. A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.
2. If the protection order is not presented, the officer may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.
3. If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order and make a reasonable effort to serve the order upon the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.
4. Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order under this chapter.

### **Registration of order.**

1. Any individual may register a foreign protection order in this state. To register a foreign protection order, an individual shall present a certified copy of the order to any clerk of district court in this state.
2. Upon receipt of a protection order, the clerk of district court shall register the order in accordance with this section. After the order is registered, the clerk of district court shall furnish to the individual registering the order a certified copy of the registered order. If a foreign order is

registered, the clerk of district court shall transmit a copy of the order to the appropriate law enforcement agency.

3. The clerk of district court shall register an order upon presentation of a copy of a protection order which has been certified by the issuing state. A registered foreign protection order which is inaccurate or is not currently in effect shall be corrected or removed from the registry in accordance with the law of this state.
4. An individual registering a foreign protection order shall file an affidavit by the protected individual that, to the best of the individual's knowledge, the order is currently in effect.
5. A foreign protection order registered under this chapter may be entered in any existing state or federal registries of protection orders, in accordance with state or federal law.
6. A fee may not be charged for the registration of a foreign protection order or the correction or removal of a foreign protection order.

**Immunity.** This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of district court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission is done in good faith in an effort to comply with this chapter.

**Other remedies.** Pursuant of remedies under this chapter does not preclude a protected individual from pursuing other legal or equitable remedies against the respondent.

**Penalty.** Violation of a protection order under this chapter is a class A misdemeanor. A second or subsequent violation of such an order is a class C felony.

**SECTION 3. REPEAL.** Section 14-07.1-02.2 of the North Dakota Century Code is repealed.

**SECTION 4. APPLICATION.** Section 2 of this Act applies to any protection order issued before, on, or after August 1, 2003, including any continuing action for enforcement of a foreign protection order commenced before August 1, 2003. A request for enforcement of a foreign protection order brought after July 31, 2003, for violations of a foreign protection order occurring before August 1, 2003, is governed by the provisions of section 2 of this Act.

Approved March 19, 2003

Filed March 19, 2003

## CHAPTER 124

### SENATE BILL NO. 2246

(Senators Fischer, Heitkamp, J. Lee)  
(Representatives Delmore, D. Johnson, Wieland)

## CHILD SUPPORT ARREARS AND LICENSE SUSPENSIONS

AN ACT to create and enact a new subsection to section 14-09-09.3 and a new section to chapter 50-09 of the North Dakota Century Code, relating to late fees charged to a child support income payer and the withholding, restriction, or suspension of licenses, permits, and registrations for failure to pay child support or comply with a subpoena; and to amend and reenact subsection 3 of section 14-09-08.1, subsection 2 of section 14-09-08.16, subsection 2 of section 14-09-09.3, and subsection 6 of section 14-09-25 of the North Dakota Century Code, relating to notice of child support arrears, duties and responsibilities of a child support income payer, and judgment interest for past-due child support.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 3 of section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Whenever there is failure to make the payments as required, the clerk of court shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district to issue a citation for contempt of court against the person who has failed to make the payments and the citation must be served on that person as provided by the North Dakota Rules of Civil Procedure. The clerk of court may delay sending a notice of arrears or request for a citation for contempt of court under this section if a notice has been mailed to the obligor under section 6 of this Act.

**SECTION 2. AMENDMENT.** Subsection 2 of section 14-09-08.16 of the North Dakota Century Code is amended and reenacted as follows:

2. Within ten days after receipt of a request for information issued under subsection 1, an income ~~payer~~ payer shall provide the requester with a written statement informing the requester whether or not the income ~~payer~~ payer is, or within the ~~thirty~~ thirty one hundred eighty days immediately preceding receipt of the request has been, an income ~~payer~~ payer with respect to that obligor. If the income ~~payer~~ payer is, or within the previous ~~thirty~~ thirty one hundred eighty days has been, an income ~~payer~~ payer with respect to that obligor, the income ~~payer~~ payer shall furnish information to the requester including:
  - a. The amount of any income currently paid to the obligor, calculated on a monthly basis;

- b. The total amount of income paid to the obligor in the twelve months preceding the month in which the request is received;
- c. Information regarding any health insurance that may be made available to the obligor's children through the income ~~payer~~ payer;
- d. The social security number under which payment of any income by the income ~~payer~~ payer to the obligor is reported;
- e. The obligor's address; and
- f. If the income ~~payer~~ payer is no longer an income ~~payer~~ payer with respect to that obligor, the date of last payment and any forwarding address.

**SECTION 3. AMENDMENT.** Subsection 2 of section 14-09-09.3 of the North Dakota Century Code is amended and reenacted as follows:

2. Any income ~~payer~~ payer who fails or refuses to deliver income pursuant to an income withholding order, when such income ~~payer~~ payer has had in its possession such income, is personally liable for the amount of such income which the income ~~payer~~ payer failed or refused to deliver, together with costs, interest, and reasonable attorney's fees. If an income payer fails or refuses to deliver income for more than fourteen business days after the date an obligor is paid, the court shall award damages in an amount equal to two hundred dollars or actual damages caused by the violation, whichever is greater, in addition to costs, interest, late fees, and reasonable attorney's fees. Any damages awarded under this subsection must be reduced by the amount of any late fees for the same payment which have been collected by the public authority under section 4 of this Act. Any damages collected by the public authority under this subsection must be paid to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any damages collected under this section must be divided equally among all affected obligors. Each remedy authorized in this subsection is a remedial sanction as defined in section 27-10-01.1.

**SECTION 4.** A new subsection to section 14-09-09.3 of the North Dakota Century Code is created and enacted as follows:

An income payer who fails to deliver income for more than seven business days after the date one or more obligors are paid may be charged a late fee equal to twenty-five dollars per obligor for each additional business day the payment is delinquent or seventy-five dollars for each additional business day the payment is delinquent, whichever is greater. A late fee charged under this subsection is payable fifteen days after service on the employer, by first-class mail, of notice of the imposition of the late fee. Failure to pay a late fee under this subsection may be punished as a contempt of court. Any late fee collected by the public authority under this subsection must be paid to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any late fees

collected under this section must be divided equally among all affected obligors.

**SECTION 5. AMENDMENT.** Subsection 6 of section 14-09-25 of the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding section 28-20-36, the state disbursement unit shall disburse collected child support payments in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.]. Any disbursement made in error is not a gift and must be repaid. The public authority may take any action not inconsistent with law to secure repayment of any disbursement made in error. Interest accrued on an unpaid child support obligation is child support. To the extent consistent with the requirements of title IV-D, a payment received with respect to a child support arrearage must first be applied to accrued interest on the earliest arrearage, and then to the principal of that arrearage. The public authority may calculate judgment interest accrued ~~only~~ on child support obligations that first became arrearages after July 1, 2002. The public authority shall enter in its records judgment interest on child support obligations that first became arrearages on or before July 1, 2002, for periods before January 1, 2004, only if a court has ordered the interest amount calculated by some individual or entity other than the public authority and approved the calculated amount. For child support obligations that first became arrearages on or before July 1, 2002, the public authority may calculate judgment interest accrued only for periods on or after January 1, 2004. For purposes of this subsection, arrearage means an unpaid child support obligation that was due in a month prior to the current month.

**SECTION 6.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Suspension of occupational, professional, recreational, motor vehicle operator, and vehicle licenses and registrations for nonpayment of child support or failure to obey subpoena.**

1. As used in this section:
  - a. "License" means:
    - (1) Any certificate, permit, or license issued by an agency of the state or a political subdivision of the state which the obligor is required to obtain prior to engaging in the obligor's occupation or profession;
    - (2) Any certificate, permit, or license issued by lottery or by tag which the obligor is required to obtain prior to engaging in a recreational activity; and
    - (3) Any operator's license or vehicle license or registration which the obligor is required to obtain prior to operating or owning a vehicle in this state. As used in this section, "vehicle" includes any motor vehicle as defined in section 39-01-01, aircraft, snowmobile, motorboat, or personal watercraft.

- b. "Licensee" means a person who has applied for or currently possesses a license.
  - c. "Licensing authority" means an agency of the state or a political subdivision of the state that issues a license, including occupational or professional boards, the game and fish department, and the department of transportation.
- 2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
  - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
  - b. An obligor who is in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less; or
  - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section.
- 3. Before withholding, restricting, or suspending a license under this section, the state agency shall send a notice to the licensee by first-class mail to the licensee's last-known address stating that the licensee has thirty days after the date of the notice to comply with the subpoena, satisfy the arrearage in full, or negotiate a payment plan with the state agency under this section. The notice must further state that the licensee may contest the action of the state agency by making a written request for a court hearing to the state agency within ten days of the date of the notice.
- 4. Upon request for a hearing under this section, the state agency shall petition the court that issued or considered the child support order for an order authorizing the state agency to withhold, restrict, or suspend one or more licenses issued to the licensee. If a child support order was issued by a court or administrative tribunal in another jurisdiction, the hearing may be held in any court of this state which has jurisdiction to enforce that order or, if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the licensee.
- 5. The court shall authorize the state agency to withhold, restrict, or suspend a license only if it finds that the licensee's failure to comply with a subpoena, a child support order, or an existing payment plan was willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, owes arrears in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less, or is not in compliance with an existing payment plan between the obligor and the state agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willful.
- 6. The state agency shall notify the appropriate licensing authority that the state agency has withheld, restricted, or suspended a license under this section. A license that is withheld, restricted, or suspended by the state agency under this section may be reinstated only by the state agency

after the licensee complies with the subpoena, satisfies the arrearage in full, or enters into a payment plan with the state agency under this section.

7. An obligor and the state agency may enter into a payment plan under which the obligor agrees to satisfy the obligor's total child support obligation, including arrears, within a period not to exceed ten years. A payment plan under this section must require the obligor to make an immediate payment to the state disbursement unit in an amount equal to five percent of the total arrears owed by the obligor or five hundred dollars, whichever is greater. The state agency may waive or reduce the immediate payment that is due under a payment plan if the obligor's current or most recent monthly support obligation is less than five hundred dollars. The state agency may require that a payment plan under this section include satisfaction of all court-ordered child support obligations of the obligor. The obligor's current or most recent monthly support obligation under section 14-09-09.30 must be considered when determining the duration of a payment plan under this section and the payments due under the agreement. A payment plan under this section is not a modification of any child support obligation of the obligor and does not bar judicial review of a child support order under section 14-09-08.4 or other enforcement actions by the obligee or the state agency.
8. An action of the state agency to withhold, restrict, or suspend a license under this section may not be appealed to the state agency or to the licensing authority, including an appeal under chapter 28-32. Section 50-09-14 does not apply to actions taken by the state agency under this section.
9. Except for statistical purposes, an entry on the driving record or abstract of a restriction or suspension under this section after the restriction or suspension ceases may not be available to the public other than by order of a court of competent jurisdiction.
10. A licensing authority and any person acting on its behalf is not liable for any actions taken to withhold, restrict, or suspend a license under this section. This section does not limit the ability of a licensing authority to withhold, restrict, or suspend a license on any other grounds authorized by law.

Approved April 8, 2003  
Filed April 9, 2003

## CHAPTER 125

### SENATE BILL NO. 2160

(Human Services Committee)

(At the request of the Department of Human Services)

## CHILD AND MEDICAL SUPPORT OBLIGATIONS

AN ACT to create and enact sections 14-09-08.20, 14-09-09.32, 14-09-09.33, and 14-09-09.34 and a new section to chapter 50-09 of the North Dakota Century Code, relating to medical support, agreements to waive child support, judicial offsets of child support, income payer duties, and cooperative agreements for child support enforcement services; to amend and reenact sections 14-09-08.11, 14-09-09.13, and 14-09-09.15, subsections 1 and 9 of section 14-09-09.16, and sections 14-09-09.17, 14-09-09.30, and 26.1-36.5-03 of the North Dakota Century Code, relating to child support, medical support, and past-due child support; to provide a continuing appropriation; to provide for a report; to provide an effective date; and to provide an expiration date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-09-08.11 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-08.11. Eligible child - Employer to permit enrollment - Employer duties and liabilities - Obligor contest.**

1. When an obligor is required to cover a ~~minor~~ child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor ~~until the child's eighteenth birthday or until further order of the court.~~ If health insurance coverage required under section 14-09-08.10 is available through an ~~income payer employer,~~ the ~~income payer employer~~ must:
  - a. Permit the obligor to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions;
  - b. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the obligee;
  - c. ~~If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the public authority, subject to subsection 2, whenever the child receives~~ Upon receipt of the national medical support notice issued under section 14-09-08.20:
    - (1) Benefits through temporary assistance for needy families or foster care under chapter 50-09, or medical assistance under chapter 50-24.1; or Comply with the provisions of the national medical support notice; and

- (2) Services provided upon application of an obligee to the child support agency Transfer the national medical support notice to the insurer that provides any such health insurance coverage for which the child is eligible, within twenty business days after the date of the national medical support notice;
- d. Not disenroll or eliminate coverage for any child unless the ~~income payer~~ employer has eliminated family health coverage for all of its employees or the employer is provided satisfactory written evidence that:
- (1) The order issued under section 14-09-08.10 is no longer in effect; or
- (2) The child is or will be enrolled in comparable coverage that will take effect no later than the effective date of disenrollment; ~~or~~
- (3) ~~The income payer has eliminated family health coverage for all of its employees;~~
- e. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health insurance coverage and pay this amount to the ~~health insurance provider~~ insurer; ~~and~~
- f. If the amount required to be withheld under subdivision e, either alone or when added to the total of any withholding required by an order issued under section 14-09-09.15, exceeds fifty percent of the obligor's disposable income, withhold fifty percent of the obligor's disposable income; ~~;~~
- g. In the case of an obligor contest under subsection 2, initiate and continue withholding until the employer receives notice that the contest is resolved; and
- h. Promptly notify the public authority, in the same manner as required under subsection 9 of section 14-09-09.16, whenever the obligor's employment is terminated.
2. ~~Before making application under subdivision e of subsection 4, the public authority shall provide notice to the obligor that the obligor may contest the proposed application by filing a written request for a hearing within ten days of the date the notice is issued. If the obligor contests the application for coverage, a hearing must be held, and the court shall require the public authority to make application if it determines coverage for the child is available to the obligor at reasonable cost. The obligor may contest the withholding provided for in subdivision e of subsection 1 by filing a request for a hearing within ten days of the date of the national medical support notice issued under section 14-09-08.20. If the obligor contests that withholding, the court shall:~~
- a. Hold a hearing within ten working days after the date of the request; and
- b. Confirm the withholding in the absence of a finding:

- (1) Of a mistake of fact; or
  - (2) That the obligee is required to provide health insurance coverage pursuant to section 14-09-08.10.
3. Withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the ~~health insurance provider~~ insurer. If the amount remaining is insufficient to pay the obligor's share of premiums for health insurance coverage, the obligor may authorize additional withholding to pay the obligor's share. If the obligor does not authorize additional withholding, and the health insurance coverage will lapse as a result, the ~~income payer~~ employer must promptly inform the ~~clerk of court or public authority that issued the order under section 14-09-09.15~~ of the insufficiency.
4. An employer receiving a national medical support notice under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.
5. For purposes of this section:
  - a. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization; and
  - b. "Insurer" has the meaning provided in section 26.1-36.5-01.

**SECTION 2.** Section 14-09-08.20 of the North Dakota Century Code is created and enacted as follows:

**14-09-08.20. National medical support notice - Public authority duties.**

1. When an obligor is required to provide health insurance coverage for a child as a beneficiary under section 14-09-08.10, the order is being enforced under title IV-D, and the obligor's employer has been identified, the public authority shall use the national medical support notice, when appropriate, to enforce the provision of health insurance coverage for the child. The public authority shall:
  - a. Serve the national medical support notice on the employer by first-class mail or in any other manner agreed to by the employer:
    - (1) Within two business days after the date of entry in the state directory of new hires of an employee who is an obligor of an order being enforced under title IV-D if the employer was identified based upon that entry; or otherwise
    - (2) Within a reasonable time;
  - b. Serve notice of the national medical support notice on the obligor by first-class mail at the obligor's last-known address;
  - c. If the insurer notified the public authority of more than one available health insurance coverage option, select:



**SECTION 3. AMENDMENT.** Section 14-09-09.13 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.13. Procedure - Notice to obligor.** If immediate income withholding under section 14-09-09.24 has not been implemented and an obligor is delinquent, if an obligee's request for income withholding is approved, or if a court changes its finding that there is good cause not to require immediate income withholding, the ~~clerk of court~~ or public authority shall serve the notice required under this section upon the obligor whenever issuing an income withholding order. The notice must state:

1. That the obligor is delinquent in the payment of child support, that a request for withholding has been made by the obligee and approved by a child support agency, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage, if any.
3. The total amount of money that will be withheld by the income ~~payer~~ payer from the obligor's income in each month as determined under section 14-09-09.30.
4. That the income ~~payer~~ payer may withhold an additional sum of three dollars to cover the income ~~payer's~~ payer's expenses.
5. That the income withholding order has been issued without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.
7. That if the obligor contests the income withholding order pursuant to section 14-09-09.14, a hearing will be held and the court will determine and issue an order consistent with the requirements of section 14-09-09.14.
8. That the income withholding order applies to any current or subsequent income ~~payer~~ payer or period of employment.

**SECTION 4. AMENDMENT.** Section 14-09-09.15 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.15. Form - Effect of income withholding order.** The income withholding order must be issued in the name of the state of North Dakota in the standard format for notice of the order prescribed by the secretary of the United States department of health and human services under authority of 42 U.S.C. 666(b)(6)(A)(ii), contain only the information necessary for the income payer to comply with the income withholding order, and be directed to all current and subsequent income payers of the obligor. The income withholding order is binding on the income payer until further notice by the ~~clerk of the~~ public authority and applies to all current and subsequent periods in which income is owed the obligor by the income payer. The income withholding order has priority over any other legal process against the same income.

**SECTION 5. AMENDMENT.** Subsections 1 and 9 of section 14-09-09.16 of the North Dakota Century Code are amended and reenacted as follows:

1. The ~~clerk of court or the~~ public authority shall serve the income withholding order on the income payer by first-class mail or in any other manner agreed to by the income payer, and upon the obligor by first-class mail to the obligor's last-known address.
9. The income payer shall notify the ~~clerk of court or the~~ public authority in writing of the termination of a duty to pay income to the obligor within seven business days of the termination. The notification must include the name and address of the obligor's subsequent income payer, if known.

**SECTION 6. AMENDMENT.** Section 14-09-09.17 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.17. Amendment - Termination of income withholding order.**

Upon amendment or termination of an income withholding order, the ~~clerk of court or the~~ public authority shall send appropriate notice to the income ~~payer~~ payer. An income withholding order is to be amended by the ~~clerk of the~~ public authority when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. When two or more income ~~payors~~ payers have been subjected to income withholding orders with respect to a child support obligation, the ~~clerk of the~~ public authority shall suspend the income withholding order directed to one or more income ~~payors~~ payers, provided that the amount of child support withheld by the remaining income ~~payer~~ payer or ~~payors~~ payers equals the amount determined under section 14-09-09.30. The ~~clerk of the~~ public authority shall immediately reinstate any suspended income withholding order should any child support obligation of the obligor thereafter become delinquent. The ~~clerk of the~~ public authority shall provide a copy of the reinstated income withholding order, by first-class mail, to the obligor and the income ~~payer~~ payer.

**SECTION 7. AMENDMENT.** Section 14-09-09.30 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.30. Monthly amount due.** The total amount of child support due in each month is ~~the sum of~~:

1. ~~The~~ If there is a current monthly support obligation, the sum of the obligor's current monthly support obligation; and
  - ~~2.~~ a. The amount the obligor is ordered to pay toward any outstanding arrearage; or
  - b. If no order to repay an arrearage exists, an amount for application to any arrearage, ~~subject to the limitations of section 14-09-09.16,~~ equal to:
    - (4) ~~Twenty~~ twenty percent of the obligor's current monthly support obligation; or
- (2) 2. If there is no current monthly support obligation, ~~the most recent monthly support obligation;~~

- a. An amount equal to the greater of:
  - (1) The amount the obligor is ordered to pay toward any outstanding arrearage; or
  - (2) The sum of the obligor's most recent monthly support obligation and twenty percent of the obligor's most recent monthly support obligation;
- b. An amount the obligor is ordered to pay toward an arrearage during periods when the supported child resides with the obligor pursuant to a court order; or
- c. An amount the obligor is ordered to pay toward an arrearage if that amount is included in an order issued when there is no current monthly support obligation.

**SECTION 8.** Section 14-09-09.32 of the North Dakota Century Code is created and enacted as follows:

**14-09-09.32. Agreements to waive child support.** An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced. An agreement purporting to waive past-due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by a court of competent jurisdiction. A copy of the order of approval must be provided to the state disbursement unit. As used in this section, "child support" does not include spousal support.

**SECTION 9.** Section 14-09-09.33 of the North Dakota Century Code is created and enacted as follows:

**14-09-09.33. Judicial offset of child support.**

1. Notwithstanding section 14-09-09.31, a court may order that a specific amount of past-due child support owed by an obligor to an obligee be offset by an equal amount of past-due child support owed to the obligor by the obligee. An order for an offset is permitted under this subsection only if:
  - a. The proposed offset is limited to past-due child support and does not apply to child support owed in the current month or owed in any future month;
  - b. The proposed offset does not include any past-due child support that has been assigned;
  - c. Neither party whose past-due child support obligation will be reduced or eliminated by the proposed offset owes past-due child support to another obligee; and
  - d. The opportunity to offset past-due child support under this section has not been used by either party as an incentive to avoid paying child support in the month in which it is due.

2. The order must include a specific finding that the proposed offset serves the best interests of the children to whom the obligor and obligee owe a duty of support.
3. Past-due child support owed by an obligor to an obligee may not be offset by past-due child support owed to the obligor by the obligee except as permitted in this section.
4. An obligor's child support obligation for the current month or for a future month may not be offset by past-due child support or other debts owed to the obligor by an obligee unless the court orders the offset as a method of satisfying an overpayment of child support that results from the establishment or reduction of a child support obligation.
5. An offset of child support under this section is considered a payment of child support by both the obligor and the obligee. A copy of the order for an offset must be provided to the state disbursement unit.
6. As used in this section, "child support" does not include spousal support.

**SECTION 10.** Section 14-09-09.34 of the North Dakota Century Code is created and enacted as follows:

**14-09-09.34. Lump sum payments.**

1. An income payer who has been served with an income withholding order issued under section 14-09-09.15 for an obligor which includes an amount for past-due support shall notify the public authority before making any lump sum payment of one thousand dollars or more to the obligor. "Lump sum payment" includes pay in lieu of vacation or other leave, bonus, commission, and any other payment to an obligor but does not include periodic payments made on regular paydays as compensation for services and does not include reimbursement for expenses incurred by the obligor on behalf of the income payer.
2. An income payer who provides notice of a lump sum payment to the public authority under subsection 1 may not make more than one-half of the payment to the obligor for thirty days from the date of the notice to the public authority or until the income payer receives written authorization from the public authority to make the lump sum payment to the obligor, whichever occurs first.
3. Notwithstanding subsection 2, an income payer who provides notice of a lump sum payment to the public authority under subsection 1 may not make a lump sum payment to an obligor if the income payer has been notified that an execution, garnishment, attachment, or other process has been initiated regarding the lump sum payment to satisfy a child support obligation of the obligor.
4. An income payer who owes a lump sum payment under this section is subject to the duties and liabilities in section 14-09-09.3 unless the context indicates otherwise.

5. This section does not apply to any portion of a lump sum payment that must be paid to satisfy an income withholding order issued under section 14-09-09.15.

**SECTION 11. AMENDMENT.** Section 26.1-36.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-36.5-03. Enrollment of children.** If a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, the insurer shall:

1. Permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions and subject to the prohibited practices provisions of this chapter;
2. If a parent fails to provide health coverage for any child, enroll the child under family coverage upon application by the child's other parent or by the department of human services; ~~and~~
3. Upon receipt of the national medical support notice issued under section 14-09-08.20 from the employer:
  - a. Comply with the provisions of the national medical support notice;
  - b. Within forty business days of the date of the national medical support notice, take appropriate action pursuant to the notice; and
  - c. Enroll the child, and the obligor if necessary, in the insurer's default plan, if any, if required under subsection 2 of section 14-09-08.20; and
4. Not disenroll or eliminate coverage for any child unless the insurer is provided satisfactory written evidence that:
  - a. The court or administrative order is no longer in effect; or
  - b. The child is or will be enrolled with comparable coverage that will take effect no later than the effective date of disenrollment.

**SECTION 12.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Continuing appropriation - Cooperative agreements for child support enforcement services.** All federal funds and other income generated by the state agency under a cooperative agreement with one or more county child support agencies for centralized administration of child support enforcement services, or with an Indian tribe for child support enforcement services, is appropriated on a continuing basis for the sole purpose of hiring additional staff and payment of other expenses as necessary to carry out the state agency's duties under the agreements.

**SECTION 13. DEPARTMENT OF HUMAN SERVICES - FUNDING FOR CHILD SUPPORT ENFORCEMENT SERVICES - REPORT TO FIFTY-NINTH LEGISLATIVE ASSEMBLY.** The department of human services shall prepare and present a report to the appropriations committees of the fifty-ninth legislative assembly on the department's use of any funds appropriated to the department

under section 12 of this Act during the biennium beginning July 1, 2003, and ending June 30, 2005.

**SECTION 14. EFFECTIVE DATE.** Section 7 of this Act applies to all child support obligations that exist on or after January 1, 2005.

**SECTION 15. EXPIRATION DATE.** Section 12 of this Act is effective through June 30, 2005, and after that date is ineffective.

Approved April 18, 2003

Filed April 18, 2003

## CHAPTER 126

### HOUSE BILL NO. 1035

(Legislative Council)  
(Family Law Committee)

## REVISED UNIFORM ADOPTION ACT

AN ACT to amend and reenact section 14-15-01, subdivision a of subsection 4 of section 14-15-03, subsection 3 of section 14-15-04, subsection 1 of section 14-15-05, sections 14-15-06 and 14-15-07, subsection 2 of section 14-15-08, sections 14-15-09, 14-15-10, 14-15-11, 14-15-12, 14-15-12.1, 14-15-13, and 14-15-14, subsection 2 of section 14-15-15, and sections 14-15-16, 14-15-17, 14-15-18, 14-15-19, and 14-15-20 of the North Dakota Century Code, relating to the Revised Uniform Adoption Act.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Abandon" means:

a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause to:

(1) Communicate with the child; or

(2) Provide for the care and support of the child as required by law.

b. As to a parent of a child in that parent's custody:

(1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;

(2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or

(3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.

2. "Adult" means an individual who is not a minor.

2. 3. "Agency" means any person certified, licensed, or otherwise specially empowered by law or rule an entity licensed under chapter 50-12 to place minors for adoption.

3. 4. "Child" means a son or daughter, whether by birth or adoption.

4. 5. "Court" means the district court of this state, and when the context requires means the court of any other state empowered to grant petitions for adoption.
6. "Department" means the department of human services.
5. 7. "Genetic parent" means the ~~natural~~ biological mother or adjudicated mother of the adopted child, or the presumed father or adjudicated father of the adopted child under chapter 14-17.
8. "Genetic sibling" means individuals with genetic relationship of sister, brother, half-sister, or half-brother.
9. "Identifying" includes full name, address, date of birth, telephone number, or anything that may lead to the identity of any previously undisclosed individual.
10. "Investigation" includes information obtained regarding the child's history, a preplacement adoption assessment of the prospective adoptive family, and an evaluation of the child's placement in the adoptive home.
6. 11. "Minor" means an individual under the age of eighteen years.
7. 12. "Nonidentifying adoptive information" means:
- a. Age of genetic parent in years at the birth of the adopted child.
  - b. Heritage of genetic parent.
  - c. Educational attainments, including the number of years of school completed by genetic parent at the time of birth of the adopted child.
  - d. General physical appearance of genetic parent at the time of birth of the adopted child, including the height, weight, color of hair, eyes, skin, and other information of a similar nature.
  - e. Talents, hobbies, and special interests of genetic parents.
  - f. Existence of any other children born to either genetic parent ~~before the birth of the adopted child.~~
  - g. Reasons for child being placed for adoption or for termination of parental right.
  - h. Religion of genetic parent.
  - i. Vocation of genetic parent in general terms.
  - j. Health history of genetic parents and blood relatives in a manner prescribed by the department ~~of human services.~~
  - k. Such further information which, in the judgment of the agency, will not be detrimental to the adoptive parent or the adopted ~~person~~

individual requesting the information, but the additional information ~~must~~ may not identify genetic parents by name or location.

8. ~~"Person" means an individual, corporation, limited liability company, governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.~~
13. "Relative" means any individual having the following relationship to the minor by marriage, blood, or adoption: brother, sister, stepbrother, stepsister, uncle, aunt, or grandparent.
14. "Stepparent" means an individual who is married to a parent of a child who has not adopted the child.

**SECTION 2. AMENDMENT.** Subdivision a of subsection 4 of section 14-15-03 of the North Dakota Century Code is amended and reenacted as follows:

- a. ~~The other spouse is a parent of the individual to be adopted and consents to the adoption~~ The petitioner is a stepparent of the individual to be adopted and the biological or legal parent of the individual to be adopted consents;

**SECTION 3. AMENDMENT.** Subsection 3 of section 14-15-04 of the North Dakota Century Code is amended and reenacted as follows:

3. The caption of a petition for adoption must be styled substantially "In the Matter of the Adoption of \_\_\_\_\_". ~~The person~~ individual to be adopted must be designated in the caption under the name by which that ~~person~~ individual is to be known if the petition is granted. If the child is placed for adoption by an agency, any name by which the child was previously known may not be disclosed in the petition, the notice of hearing, or in the decree of adoption.

**SECTION 4. AMENDMENT.** Subsection 1 of section 14-15-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless consent is not required under section 14-15-06, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:
- a. The mother of the minor whether by birth or adoption;
- b. The father of the minor, if:
- (1) The minor is the father's child by adoption, or the father has otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought; or
- (2) The person is presumed to be the ~~natural~~ biological father of the minor under subsection 1 of section 14-17-04, provided the nonexistence of the father and child relationship between them has not been judicially determined;
- c. Any ~~person~~ individual lawfully entitled to custody of the minor or empowered to consent;

- d. The court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the ~~person of the~~ minor is not empowered to consent to the adoption;
- e. The minor, if more than ten years of age, unless the court in the best interest of the minor dispenses with the minor's consent; and
- f. The spouse of the minor to be adopted.

**SECTION 5. AMENDMENT.** Section 14-15-06 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-06. Persons Individuals as to whom consent not required - Notice of hearing.**

1. Consent to adoption is not required of:
  - a. A parent who has deserted a child without affording means of identification or who has abandoned a child.
  - b. A parent of a child in the custody of another, if the parent for a period of at least one year has failed significantly without justifiable cause:
    - (1) To communicate with the child; or
    - (2) To provide for the care and support of the child as required by law or judicial decree.
  - c. The father of a minor if the father's consent is not required by subdivision b of subsection 1 of section 14-15-05.
  - d. A parent who has relinquished that parent's right to consent under section 14-15-19.
  - e. A parent whose parental rights have been terminated by order of court under section 14-15-19.
  - f. A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent.
  - g. Any parent of the individual to be adopted, if the individual is an adult.
  - h. Any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after examination of the guardian's or custodian's written reasons for withholding consent, is found by the court to be withholding consent unreasonably.
  - i. The spouse of the individual to be adopted, if the failure of the spouse to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

- j. A parent of the minor, if the failure of the parent to consent is excused by the court in the best interest of the child by reason of the parent's prolonged unexplained absence, unavailability, incapacity, or significant failure, without justifiable cause, to establish a substantial relationship with the minor or to manifest a significant parental interest in the minor, or by reason of inability of the court to identify the parent.
2. Except as provided in section 14-15-11, notice of hearing on a petition for adoption need not be given to a ~~person~~ an individual whose consent is not required or to a ~~person~~ an individual whose consent or relinquishment has been filed with the petition.

**SECTION 6. AMENDMENT.** Section 14-15-07 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-07. How consent is executed.**

4. The required consent to adoption must be executed at any time after the birth of the child and in the manner following:
  - a. 1. If by the individual to be adopted, in the presence of the court.
  - b. 2. If by an agency, by the executive head or other authorized representative, in the presence of a ~~person~~ an individual authorized to take acknowledgments.
  - e. 3. If by any other ~~person~~ individual, in the presence of the court or in the presence of a ~~person~~ an individual authorized to take acknowledgments.
  - d. 4. If by a court, by appropriate order or certificate.
2. ~~A consent which does not name or otherwise identify the adopting parent is valid if the consent contains a statement by the person whose consent it is that the person consenting voluntarily executed the consent irrespective of disclosure of the name or other identification of the adopting parent.~~

**SECTION 7. AMENDMENT.** Subsection 2 of section 14-15-08 of the North Dakota Century Code is amended and reenacted as follows:

2. A consent to adoption may be withdrawn ~~prior to~~ before the entry of a decree of adoption if the court finds, after notice and opportunity to be heard is afforded to petitioner, the ~~person~~ individual seeking the withdrawal, and the agency placing a child for adoption, that the withdrawal is in the best interest of the individual to be adopted and the court orders the withdrawal.

**SECTION 8. AMENDMENT.** Section 14-15-09 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-09. Petition for adoption.**

1. A petition for adoption must be signed and verified by the petitioner, filed with the clerk of the court, and state:

- a. The date and place of birth of the individual to be adopted, if known.
- b. The name to be used for the individual to be adopted.
- c. The date petitioner acquired custody or date of placement of the minor and the name of the ~~person~~ individual placing the minor.
- d. The full name, age, place, and duration of residence of the petitioner.
- e. The marital status of the petitioner, including the date and place of marriage, if married.
- f. That the petitioner has facilities and resources, including those available under a subsidy agreement, suitable to provide for the nurture and care of the minor to be adopted, and that it is the desire of the petitioner to establish the relationship of parent and child with the individual to be adopted.
- g. A description and estimate of value of any property of the individual to be adopted.
- h. The name of any ~~person~~ individual whose consent to the adoption is required, but who has not consented, and facts or circumstances which excuse the lack of the ~~person's~~ individual's consent normally required to the adoption.
- i. The department of ~~human services~~ or a county social service board as respondent.
- j. That the petitioner's expenses were reasonable as verified by the court. Reasonable fees may be charged for professional services and living expenses if reflected in a report of agreements and disbursements filed under this chapter and approved by the court. The fees may not be contingent upon placement of the child for adoption, consent to adoption, or cooperation in the completion of adoption. Reasonable fees may include:
  - (1) Preplacement counseling, adoption assessment, placement of the child, foster care, or other preadoption services, which must be paid directly to the provider of the services;
  - (2) Legal fees relating to the petition for relinquishment or adoption, that must be paid directly to the provider of the services;
  - (3) Medical expenses relating to prenatal care and the birth of the child, that are not already covered by health insurance;
  - (4) Expenses for transportation, meals, and lodging incurred for placement of the child or in order to receive counseling, legal, or medical services related to the pregnancy, birth, or placement; and

- (5) Living expenses of the birth mother which are needed to maintain an adequate standard of living, which the birth mother is unable to otherwise maintain because of loss of income or other support resulting from the pregnancy.
- (a) The payments may cover expenses incurred during the pregnancy-related incapacity but not for a period longer than six weeks following the delivery, unless the court determines within the six-week period that the birth mother is unable to be employed due to physical limitations relating to the birth of the child.
- (b) Living expenses do not include expenses for lost wages, gifts, educational expenses, vacations, or other similar expenses of a birth mother.
2. A certified copy of the birth certificate or verification of birth record of the individual to be adopted, if available, and the required consents and relinquishments must be filed with the clerk.
3. Any ~~person~~ individual filing a petition shall pay to the clerk of court a filing fee as prescribed in subsection 1 of section 27-05.2-03.

**SECTION 9. AMENDMENT.** Section 14-15-10 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-10. Report of petitioner's expenditures.**

1. Except as specified in subsection 2, the petitioner in any proceeding for the adoption of a minor shall file, before the petition is heard, a full accounting report in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. Fees may not be contingent upon placement of the child for adoption, consent to adoption, or cooperation in the completion of adoption. The report must show any expenses incurred in connection with:
- a. ~~The birth of the minor~~ Preplacement counseling, adoption assessment, placement of the child, foster care, or other preadoption services, that must be paid directly to the provider of the services;
- b. ~~Placement of the minor with petitioner~~ Legal fees relating to the petition for relinquishment or adoption, that must be paid directly to the provider of the services;
- c. ~~Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement~~ expenses relating to prenatal care and the birth of the child, that are not already covered by health insurance; and
- d. ~~Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person~~ Expenses for transportation, meals, and lodging incurred for placement of the

child or in order to receive counseling, legal, or medical services related to the pregnancy, birth, or placement; and

e. Living expenses of the birth mother which are needed to maintain an adequate standard of living, which the birth mother is unable to otherwise maintain because of loss of income or other support resulting from the pregnancy.

(1) Payments may cover expenses incurred during the pregnancy-related incapacity but not for a period longer than six weeks following the delivery, unless the court determines within the six-week period that the birth mother is unable to be employed due to physical limitations relating to the birth of the child.

(2) Living expenses do not include expenses for lost wages, gifts, educational expenses, vacations, or other similar expenses of a birth mother.

2. This section does not apply to an adoption by a stepparent whose spouse is a ~~natural~~ biological or adoptive parent of the child.
3. Any report made under this section must be signed and verified by the petitioner.

**SECTION 10. AMENDMENT.** Section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-11. Notice of petition - Investigation and hearing.**

1. a. After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing must be given by the petitioner to the department of ~~human services~~; any agency or ~~person~~ individual whose consent to the adoption is required by this chapter but who has not consented; a ~~person~~ an individual whose consent is dispensed with upon any ground mentioned in subdivisions a, b, f, h, i, and j of subsection 1 of section 14-15-06 but who has not consented; and any ~~person~~ individual identified by the court as a ~~natural~~ biological parent or a possible ~~natural~~ biological parent of the minor, upon making inquiry to the extent necessary and appropriate, as in proceedings under sections 27-20-45 and 14-17-24, unless the ~~person~~ individual has relinquished parental rights or the ~~person's~~ individual's parental rights have been previously terminated by a court. The notice to the department of ~~human services~~ must be accompanied by a copy of the petition.
- b. Notice of the filing of a petition to adopt an adult must be given by the petitioner at least twenty days before the date of the hearing to each living parent of the adult to be adopted.
2. An investigation must be made by a licensed child-placing agency to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether the

adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor.

3. A written report of the investigation must be filed with the court by the investigator before the petition is heard.
4. The report of the investigation must contain ~~an evaluation of the placement,~~ a review of the child's history; a preplacement adoption assessment of the petitioner, including a criminal history record investigation of the petitioner; and a postplacement evaluation of the placement with a recommendation as to the granting of the petition for adoption and any other information the court requires regarding the petitioner or the minor.
5. An investigation and report is not required in cases in which a stepparent is the petitioner or the ~~person~~ individual to be adopted is an adult. The department of ~~human services,~~ when required to consent to the adoption, may give consent without making the investigation. If the petitioner is a relative other than a stepparent of the minor, the minor has lived with the petitioner for at least nine months, no allegations of abuse or neglect have been filed against the petitioner or any member of the petitioner's household, and the court is satisfied that the proposed adoptive home is appropriate for the minor, the court may waive the investigation and report required under this section. ~~For the purpose of this section, "relative" means any person having the following relationship to the minor by marriage, blood, or adoption: grandparent, brother, sister, stepbrother, stepsister, uncle, or aunt.~~
6. The department of ~~human services,~~ when required to consent to the adoption, may request the licensed child-placing agency to ~~make investigations of designated portions of the inquiry as may be appropriate and to make a written report thereof as a supplemental report to the court~~ conduct further investigation and to make a written report thereof as a supplemental report to the court.
7. After the filing of a petition to adopt an adult, the court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any ~~person~~ individual whose consent to the adoption is required but who has not consented and to each living parent of the adult to be adopted. The court may order an appropriate investigation to assist it in determining whether the adoption is in the best interest of the ~~persons~~ individuals involved.
8. Notice must be given in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state or in any manner the court by order directs. Proof of the giving of the notice must be filed with the court before the petition is heard.

**SECTION 11. AMENDMENT.** Section 14-15-12 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-12. Required residence of minor.** A final decree of adoption may not be issued and an interlocutory decree of adoption does not become final, until the minor to be adopted, other than a stepchild of the petitioner, has lived in the adoptive home ~~for~~:

1. For at least six months after placement by an agency;
2. For six months after placement by a parent in accordance with an identified relinquishment under chapter 14-15.1;
3. As a foster child for at least six months and has been placed for adoption by an agency; or for
4. For at least six months after the department of human services or the court has been informed of the custody of the minor by the petitioner, and the department of human services or court has had an opportunity to observe or investigate the adoptive home.

**SECTION 12. AMENDMENT.** Section 14-15-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-12.1. Health insurance requirements for adoptees.** The department of human services, ~~county social service board,~~ or child-placing agency involved in an adoption ~~proceeding action~~ may at any time ~~prior to~~ before a final decree of adoption, if legal custody of the ~~person~~ individual to be adopted is not held by the department, ~~a county social service board,~~ a child-placing agency, or an equivalent office or agency outside the state, require the petitioner for the adoption of another ~~person~~ individual to show proof that a health insurance policy is in effect which provides coverage for the ~~person~~ individual to be adopted. If proof of health insurance coverage is submitted by the petitioner, no further bond of any kind may be required by the department or a county social service board in regard to health coverage of the ~~person~~ individual to be adopted.

**SECTION 13. AMENDMENT.** Section 14-15-13 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-13. Appearance - Continuance - Disposition of petition.**

1. The petitioner and the individual to be adopted shall appear at the hearing on the petition, unless the presence of either is excused by the court for good cause shown.
2. The court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition.
3. If at the conclusion of the hearing, the court determines that the required consents have been obtained and that the adoption is in the best interest of the individual to be adopted, ~~it~~ the court may ~~(a) issue:~~
  - a. Issue a final decree of adoption; or ~~(b) issue~~
  - b. Issue an interlocutory decree of adoption, which by its own terms automatically becomes a final decree of adoption on a day specified in the decree, ~~which that~~ that day may not be less than six months nor more than one year after the minor was placed in the adoptive home by an agency or after the department of human services or court was informed of the custody of the minor by the petitioner, unless sooner vacated by the court for good cause shown. In an interlocutory decree of adoption, the court shall

provide for observation, investigation, and further report on the adoptive home during the interlocutory period.

4. If the requirements for a decree under subsection 3 have not been met, the court shall dismiss the petition and determine the person to have custody of the minor, including the petitioners if in the best interest of the minor. In an interlocutory decree of adoption the court may provide for observation, investigation, and further report on the adoptive home during the interlocutory period. The court shall make a finding as to the reasonableness of expenses reported under section 14-15-10.
5. If the requirements for a decree under subsection 3 have not been met, the court shall dismiss the petition and determine the individual to have custody of the minor, including the petitioners if in the best interest of the minor.

**SECTION 14. AMENDMENT.** Section 14-15-14 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-14. Effect of petition and decree of adoption.**

1. A final decree of adoption and an interlocutory decree of adoption which has become final, whether issued by a court of this state or of any other place, have the following effect as to matters within the jurisdiction or before a court of this state:
  - a. Except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the ~~natural~~ biological parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and the individual's relatives, including the individual's ~~natural~~ biological parents, so that the adopted individual thereafter is a stranger to the individual's former relatives for all purposes including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, ~~which~~ that do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship; and
  - b. To create the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from their operation or effect.
2. Notwithstanding the provisions of subsection 1, if a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's right of inheritance from or through the deceased parent is unaffected by the adoption.
3. An interlocutory decree of adoption, while it is in force, has the same legal effect as a final decree of adoption. If an interlocutory decree of adoption is vacated, it must be as though void from its issuance, and the

rights, liabilities, and status of all affected ~~persons~~ individuals which have not become vested must be governed accordingly.

**SECTION 15. AMENDMENT.** Subsection 2 of section 14-15-15 of the North Dakota Century Code is amended and reenacted as follows:

2. Subject to the disposition of an appeal, upon the expiration of one year after an adoption decree is issued the decree cannot be questioned by any ~~person~~ individual, including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless, in the case of the adoption of a minor the petitioner has not taken custody of the minor; ~~or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the one-year period.~~

**SECTION 16. AMENDMENT.** Section 14-15-16 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-16. Hearings and records in adoption proceedings - Confidential nature - Disclosure of identifying and nonidentifying information - Retroactive operation.**

1. The provisions of this section supersede any other law regarding public hearings and records.
2. For purposes of this section:
  - a. ~~"Department" means the department of human services.~~
  - b. "Genetic parent" includes a man presumed or adjudicated to be the adopted ~~person's~~ individual's father under chapter 14-17 and an alleged father when so indicated in the files of the child-placing agency or the department, but only if there exists in those files information that corroborates the allegation of paternity, including the existence of communications between the alleged father and the child-placing agency, or between the alleged father and the genetic mother or members of her family, or such other corroborative information as may be permitted by rules adopted by the department.
  - c. ~~"Genetic sibling" means persons with the genetic relationship of sister, brother, half-sister, or half-brother.~~
  - b. "Notify" means to make a personal and confidential contact with the individual to whom a disclosure of identifying information has been requested. The personal and confidential contact must be made by an employee or agent of the child-placing agency that processed the adoption or by some other licensed child-placing agency designated by the individual initiating the search.
3. All hearings held in ~~proceedings~~ actions under this chapter must be held in closed court without admittance of any ~~person~~ individual other than essential officers of the court, the parties, their witnesses, counsel, ~~persons~~ individuals who have not previously consented to the adoption but are required to consent, the parents of an adult to be adopted, and representatives of the agencies present to perform their official duties.

Upon a showing of good cause by the petitioner, the court may prohibit the parents of an adult to be adopted from attending the adoption hearings and proceedings. A parent of an adult to be adopted who is prohibited by the court from attending the proceedings may submit relevant testimony or information regarding the petition to the court in writing.

4. All papers,<sup>1</sup> records,<sup>1</sup> and ~~information pertaining to the adoption~~ identifying and nonidentifying information relating to an adopted individual, birth siblings, birth parents, or adoptive parents, whether part of the permanent record of the court or of a file in the department or in an agency are confidential and may be disclosed only in accordance with this section. Papers, records, and information directly pertaining to the adoption must be kept permanently by the department and agency.
5. Nonidentifying information, if known, concerning undisclosed genetic parents ~~shall~~ must be furnished at a reasonable fee to:
  - a. The adoptive parents at the time of adoptive placement or upon their written request<sup>1</sup>;
  - b. An adopted adult upon written request<sup>1</sup>; or
  - c. A birth parent upon written request.
6. The clerk of the appropriate district court, upon request and payment of the proper fee, shall furnish a certified copy of the decree of adoption to the adoptive parents, the guardian of an adopted minor child, or an adopted adult, provided the decree does not disclose the identity of the genetic parents or the name of the adopted ~~person prior to~~ individual before the adoption proceedings action.
7. ~~At~~ Before the child reaches adulthood, at the discretion of the child-placing agency, with due regard for confidentiality and upon the consent of all the parties involved, exchanges of identifying or nonidentifying information may take place between the genetic parents, adoptive parents, and adopted child ~~as follows:~~
  - a. ~~At the time the child is placed for adoption, the genetic parents and the adoptive parents may meet, in person, without disclosing their names.~~
  - b. ~~The genetic parents and the adoptive parents may exchange correspondence through the child-placing agency.~~
  - c. ~~The child-placing agency may inform the genetic parents of the death of the child they placed for adoption.~~
  - d. ~~The child-placing agency may inform the adopted adult, or the adoptive parents of a minor of the death of a genetic parent.~~
  - e. ~~The child-placing agency may inform the genetic parents of pertinent medical information concerning the adopted child or adult.~~

- f. ~~The child-placing agency may inform the adopted adult or the adoptive parents of a minor of pertinent medical information concerning the genetic parents.~~ Disclosure of a party's identifying information may not occur unless the party consents to disclosure.
- b. If one parent objects, the identifying information disclosed by the agency may only relate to the consenting parent or parents.
8. An adopted ~~person~~ individual who is eighteen years of age or older may request the department to initiate the disclosure of information identifying the adopted ~~person's~~ individual's genetic parents or to initiate the disclosure of nonidentifying information not on file with the department or a child-placing agency.
9. An adopted ~~person~~ individual who is eighteen years of age or older may request the department to initiate the disclosure of information identifying the adopted ~~person's~~ individual's adult genetic sibling.
10. A genetic parent of a ~~person~~ an adopted individual, ~~with respect to whom that parent's parental rights were voluntarily terminated,~~ after that ~~person~~ individual has reached twenty-one years of age, may request the department to initiate the disclosure of information identifying that ~~person~~ individual or to initiate the disclosure of nonidentifying information not on file with the department or a child-placing agency.
11. An adult genetic sibling of a ~~person, with respect to whom the parental rights of the sibling's and the person's mutual parent or parents were voluntarily terminated~~ an adopted individual, after that ~~person~~ individual has reached twenty-one years of age, may request the department to initiate disclosure of information identifying that ~~person~~ individual.
12. An adult child of a deceased adopted individual may request the department to initiate the disclosure of information identifying the adopted individual's genetic parents or to initiate the disclosure of nonidentifying information not on file with the department or child-placing agency.
13. An adult child of an adopted individual who is still living may not request the department to initiate disclosure of information identifying the adopted individual's genetic parents or to initiate the disclosure of nonidentifying information not on file with the department or child-placing agency.
14. The department shall, within five working days of receipt of a request under subsection 8, 9, 10, ~~or~~ 11, 12, or 13, notify in writing a child-placing agency having access to the requested information. If the department's records do not identify any child-placing agency having access to the requested information, the department, within five working days after receipt of the request, shall so notify the requester in writing. The requester may designate a child-placing agency from a list of such agencies furnished by the department, ask the department to designate an agency, or terminate the request.
- ~~13.~~ 15. Within ninety days after receiving notice of a request made under subsection 8, 9, 10, ~~or~~ 11, 12, or 13, the child-placing agency shall make complete and reasonable efforts to notify the ~~person~~ individual or

~~persons~~ individuals with respect to which a disclosure of identifying information has been requested. The child-placing agency must certify the results of its efforts to the department within one hundred twenty days after receipt of the request. The child-placing agency may charge a reasonable fee to the requester for the cost of making a search pursuant to the request. All communications under this subsection are confidential. ~~For purposes of this subsection, "notify" means a personal and confidential contact with the person with respect to whom a disclosure of identifying information has been requested. The personal and confidential contact may not be by mail and must be by an employee or agent of the child-placing agency which processed the pertinent adoption, or some other licensed child-placing agency designated by the child-placing agency.~~ If the search is not completed within ninety days, additional time may be requested. Approval of this request must be given by the individual requesting the search.

44. 16. The personal and confidential contact must be evidenced by an affidavit of notification executed by the ~~person~~ individual who notified each genetic parent, adopted ~~person~~ individual, or genetic sibling and certifying that each genetic parent, adopted ~~person~~ individual, or genetic sibling contacted was given the following information:
- a. The nature of the identifying information to which the agency has access.
  - b. The nature of any nonidentifying information requested.
  - c. The date of the request of the adopted ~~person~~ individual, genetic parent, or genetic sibling.
  - d. The right of the genetic parent, adopted ~~person~~ individual, or genetic sibling to file, authorize disclosure, or refuse to authorize disclosure.
  - e. The effect of a failure of the genetic parent, adopted ~~person~~ individual, or genetic sibling to either authorize disclosure or refuse to authorize disclosure.
45. 17. An adopted ~~person~~ individual, genetic parent, or genetic sibling, with respect to whom a disclosure of identifying information has been requested, may authorize disclosure, refuse to authorize disclosure, or take no action. If no action is taken in response to a request, the child-placing agency must treat that as a refusal to authorize disclosure, except that it does not preclude disclosure after the ~~person's~~ individual's death.
18. If the child-placing agency has been able to locate only one genetic parent who authorizes disclosure and the other genetic parent cannot be located, the identifying information must be disclosed to the adopted individual. The information disclosed by the agency may relate only to the consenting parent.
19. If the child-placing agency has located both genetic parents and only one genetic parent authorizes disclosure, the child-placing agency may not disclose identifying information regarding the consenting parties unless there is a court order authorizing the disclosure. Upon

application to the court by the child-placing agency, the court shall issue an order authorizing disclosure of information identifying the consenting parties. The order must include any conditions the court determines sufficient to reasonably ensure the continued nondisclosure of information identifying the objecting genetic parent. Conditions placed on the disclosure may include a sworn statement by the consenting genetic parent to refrain from disclosing to the adopted individual any information identifying the objecting genetic parent.

- 46- 20. The certification of the child-placing agency to the department must include:
- a. A statement of whether it has been able to notify the ~~person~~ individual about whom a disclosure of identifying information was requested and whether a notification was precluded by the death of the ~~person~~ individual.
  - b. If a genetic sibling was to be notified at the request of an adopted ~~person~~ individual, or if an adopted ~~person~~ individual was to be notified at the request of a genetic sibling, a statement of whether either ~~person~~ individual knows the identity of any mutual genetic parent.
  - c. Assurances that:
    - (1) No disclosure of identifying information has been made with respect to any adopted ~~person~~ individual, genetic parent, or genetic sibling who has not authorized the disclosure in writing unless the child-placing agency has verified that the ~~person~~ individual has died leaving no unrevoked written refusal to authorize disclosure.
    - (2) Any disclosure of identifying information that might lawfully be made under this section was made within ten days after the date of receipt of written authorization or the date on which the agency verified that the ~~person~~ individual had died.
  - d. Copies of any written authorization of disclosure or refusal to authorize disclosure.
  - e. A statement that the ~~person~~ individual about whom disclosure of identifying information was requested has neither authorized nor refused to authorize disclosure at the time of the certification.
  - f. The date of each notification.
  - g. A copy of each affidavit of notification.
47. If the child-placing agency is unable to notify the genetic parent, adopted person, or genetic sibling within ninety days, the identifying information shall not be disclosed.
48. If the child-placing agency has been able to locate only one genetic parent who authorizes disclosure and the other genetic parent cannot be located, the identifying information must be disclosed to the adopted

~~person. The information disclosed by the agency may relate only to the consenting parent.~~

49. 21. The child-placing agency, acting on the request of an adopted ~~person~~ individual to disclose identifying information about a genetic sibling, or acting on the request of a genetic sibling to disclose identifying information about an adopted ~~person~~ individual, must determine if either ~~person~~ individual knows the identity of a living mutual genetic parent. If either ~~person~~ individual knows the identity of a living mutual genetic parent, no disclosure may be made unless that parent is first notified, in the manner provided for in subsection 13, ~~and authorizes the disclosure.~~ The identifying information released may only relate to the consenting parties.
20. 22. Upon application to the department by an adult adopted ~~person~~ individual or the parent or guardian of a minor adopted child, the department may investigate or cause to be investigated facts necessary to determine the adopted ~~person's~~ individual's eligibility for enrollment as a member of an Indian tribe.
- a. The department may inquire of any ~~person~~ individual or agency, including a licensed child-placing agency in North Dakota, to assist in the investigation.
  - b. All identifying information obtained by the department shall remain confidential.
  - c. The bureau of Indian affairs or an Indian tribe may be provided sufficient information obtained from the investigation to determine the eligibility of the adopted ~~person~~ individual for enrollment in an Indian tribe. ~~Prior to~~ Before the department's release of information to the bureau of Indian affairs or an Indian tribe, the department ~~will obtain~~ shall request written assurance from the bureau of Indian affairs or an Indian tribe that the information provided will remain confidential, and will not be furnished to any unauthorized ~~person~~ individual or agency.
  - d. The procedure used in contacting the genetic parents of the adopted child ~~shall~~ must be a personal and confidential contact. Any necessary contact ~~shall~~ must be made by an employee or agent of a licensed child-placing agency or the department. The information requested of the genetic parents ~~shall~~ must be limited to that information necessary to make a determination of the adopted ~~person's~~ individual's eligibility for enrollment in an Indian tribe.
  - e. The department or agency may charge a reasonable ~~investigation~~ fee.
24. 23. ~~No person~~ An individual may not be required to disclose the name or identity of either an adoptive parent or an adopted ~~person~~ individual except:
- a. In accordance with this section;

- b. As authorized in writing by the adoptive parent or the adopted ~~person~~ individual; or
  - c. Upon order of the court entered in a proceeding brought under subsection ~~22~~ 24.
- ~~22.~~ 24. An adopted ~~person~~ individual, a genetic parent, a genetic sibling, or a guardian of any of those ~~persons~~ individuals may petition the district court for an order directing the disclosure of identifying information.
- a. The petitioner ~~must~~ shall state that efforts to secure the requested disclosure have been made under this section or are forbidden under this section, that the petitioner has a significant need for the disclosure, and the nature of that need.
  - b. The petition ~~must~~ shall name the department and any child-placing agency ~~which that~~ that has received a request under subsection 8, 9, 10, ~~or 11, 12, or 13~~ as respondents.
  - c. The respondents must furnish, to the court, for in-camera review, copies of such records as the respondents may possess that contain requested identifying information.
  - d. The court may determine if ~~persons~~ individuals about whom the disclosure of identifying information is requested must be furnished notice of the proceeding, and may require that the respondents give notice to those ~~persons~~ individuals. If those persons participate in the proceeding, they must be permitted to do so in a manner, to be determined by the court, which avoids disclosure of identifying information except when disclosure is ordered by the court.
  - e. The court may order disclosure only if the petitioner demonstrates that disclosure will not result in any substantial harm to the ~~person~~ individual about whom identifying information is sought. The court may not order the disclosure of identifying information concerning any ~~person~~ individual who objects to that disclosure.
- ~~23.~~ 25. The provisions of this section governing the release of identifying and nonidentifying adoptive information apply to adoptions completed before and after July 1, 1979.
- ~~24.~~ 26. Any child-placing agency discharging in good faith its responsibilities under this section is immune from any liability, civil or criminal, that otherwise might result.
- ~~25.~~ 27. The department shall make such reasonable rules as are necessary to carry out the purposes of this section.

**SECTION 17. AMENDMENT.** Section 14-15-17 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-17. Recognition of foreign decree affecting adoption.** A decree of court terminating the relationship of parent and child or establishing the relationship by adoption issued pursuant to due process of law by a court of any other jurisdiction within or ~~without~~ outside of the United States must be recognized in this state and

the rights and obligations of the parties as to matters within the jurisdiction of this state must be determined as though the decree were issued by a court of this state.

**SECTION 18. AMENDMENT.** Section 14-15-18 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-18. Application for new birth record.** Within thirty days after an adoption decree becomes final, the clerk of the court shall prepare an application for a birth record in the new name of the adopted individual and forward the application to the appropriate vital statistics office of the place, if known, where the adopted individual was born and forward a copy of the decree to the department of ~~human services~~ human services of this state for statistical purposes. In the case of the adoption of a ~~person~~ an individual born outside of the United States, the court may make findings, based on evidence from the petitioner and other reliable state or federal sources, on the date and place of birth and parentage of the adopted ~~person~~ individual. These findings must be certified by the court and included with the report of adoption filed with the state registrar of vital statistics pursuant to section 23-02.1-17.

**SECTION 19. AMENDMENT.** Section 14-15-19 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-19. Relinquishment and termination of parent and child relationship.**

1. The rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or ~~prior to~~ before an adoption ~~proceeding~~ action as provided in this section.
2. All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing, signed by the parent, regardless of the age of the parent:
  - a. In the presence of a representative of an agency taking custody of the child, whether the agency is within or ~~without~~ outside of the state or in the presence and with the approval of a judge of a court of record within or ~~without~~ outside this state in which the minor was present or in which the parent resided at the time it was signed; ~~which relinquishment may be withdrawn within ten days after it is signed or the child is born, whichever is later; and the relinquishment is invalid unless it states that the parent has this right of withdrawal;~~ or
  - b. In any other situation if the petitioner has had custody of the minor for two years, but only if notice of the adoption proceeding has been given to the parent and the court finds, after considering the circumstances of the relinquishment and the long continued custody by the petitioner, that the best interest of the child requires the granting of the adoption.
3. In addition to any other action or proceeding provided by law, the relationship of parent and child may be terminated by a court order issued in connection with an adoption ~~proceeding~~ action under this

chapter on any ground provided by other law for termination of the relationship, and in any event on the ground ~~(a) that:~~

- a. That the minor has been abandoned by the parent, ~~(b) that;~~
  - b. That by reason of the misconduct, faults, or habits of the parent or the repeated and continuous neglect or refusal of the parent, the minor is without proper parental care and control, or subsistence, education, or other care or control necessary for the minor's physical, mental, or emotional health or morals, or, by reason of physical or mental incapacity the parent is unable to provide necessary parental care for the minor, and the court finds that the conditions and causes of the behavior, neglect, or incapacity are irremediable or will not be remedied by the parent, and that by reason thereof the minor is suffering or probably will suffer serious physical, mental, moral, or emotional harm, ~~or (c) that; or~~
  - c. That in the case of a parent not having custody of a minor, the noncustodial parent's consent is being unreasonably withheld contrary to the best interest of the minor.
4. For the purpose of proceeding under this chapter, a decree terminating all rights of a parent with reference to a child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights or parent and child relationship are terminated by the decree and with any required notice of an adoption ~~proceeding~~ action other than as provided in this section.
  5. A petition for termination of the relationship of parent and child made in connection with an adoption ~~proceeding~~ action may be made by:
    - a. Either parent if termination of the relationship is sought with respect to the other parent;
    - b. The petitioner for adoption, the guardian of the ~~person~~ individual, the legal custodian of the child, or the individual standing in parental relationship to the child;
    - c. An agency; or
    - d. Any other ~~person~~ individual having a legitimate interest in the matter.
  6. Before the petition is heard, notice of the hearing ~~thereon~~ on the petition and opportunity to be heard must be given the parents of the child, the guardian of the ~~person of the~~ child, the person having legal custody of the child, any proposed custodian of the child, and, in the discretion of the court, a person appointed to represent any party.
  7. Notwithstanding the provisions of subsection 2, a relinquishment of parental rights with respect to a child, executed under this section, may be withdrawn by the parent, and a decree of a court terminating the parent and child relationship under this section may be vacated by the court upon motion of the parent, if the child is not on placement for

adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

**SECTION 20. AMENDMENT.** Section 14-15-20 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-20. Adoption and legitimation by conduct.** Notwithstanding the other provisions of this chapter, the biological father of an illegitimate minor adopts and legitimates a minor by publicly acknowledging the minor as that ~~person's~~ man's child, receiving the minor into that ~~person's~~ man's home, with the consent of that ~~person's~~ man's wife, if that ~~person~~ man is married, and otherwise treating the minor as if the minor were legitimate. Thereafter, the minor is deemed the legitimate child of the father for all purposes from the time of birth of the minor, the same as if the adoption had been finally decreed pursuant to this chapter.

Approved May 2, 2003

Filed May 2, 2003

## CHAPTER 127

### HOUSE BILL NO. 1036

(Legislative Council)  
(Family Law Committee)

### ADOPTION

AN ACT to amend and reenact subsections 1 and 4 of section 14-15.1-03 and sections 14-15.1-04, 14-15.1-06, and 14-15.1-07 of the North Dakota Century Code, relating to child relinquishment to identified adoptive parents.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 1 and 4 of section 14-15.1-03 of the North Dakota Century Code are amended and reenacted as follows:

1. The court shall set a time and place for a hearing on the petition for relinquishment. A guardian ad litem must be appointed for the child at least seven days prior to the hearing. The hearing may not be held sooner than forty-eight hours after the child's birth or the signing of all necessary consents to adoption, whichever is later. If a ~~preplacement~~ report of a child-placing agency is filed with the petition pursuant to section 14-15.1-04, the court may enter a temporary order placing the child with the identified adoptive parent pending the hearing.
  
4. If the court approves the petition and determines, based upon the ~~preplacement study~~ report of the child-placing agency and other evidence presented at the hearing, that placement with the identified adoptive parent is in the best interests of the child, the court shall ~~order that the child be placed with the identified adoptive parent pending adoption.~~ The identified adoptive parent is financially responsible for the support of the child until further order of the court. The court shall also enter an order terminating the relationship of the birth parent and the child:
  - a. Enter an order terminating the relationship of the birth parent and the child;
  - b. Order that the child be placed with the identified adoptive parent pending adoption;
  - c. Order supervision by a child-placing agency until the adoption is finalized;
  - d. Order the identified adoptive parent financially responsible for the support of the child until further order of the court; and
  - e. Make a finding regarding the reasonableness of expenses reported under section 14-15.1-05.

**SECTION 2. AMENDMENT.** Section 14-15.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**14-15.1-04. Report of child-placing agency.** ~~Prior to~~ Before a hearing under this chapter, the ~~preplacement adoptive home study~~ report of a child-placing agency must be filed with the court. The child-placing agency shall serve a copy of the report upon the birth parent, the identified adoptive parent, the guardian ad litem, and the department at least seven days ~~prior to~~ before the hearing. The report must include the following:

1. A recommendation as to whether the home of the identified adoptive parent is a suitable home for the placement of the child.
2. ~~An~~ A preplacement adoption assessment of indicating how the identified adoptive parent's emotional maturity, finances, health, relationships, criminal history record, and any other relevant factors may affect the identified adoptive parent's ability to accept, care for, and provide the child with an adequate environment in which to mature.
3. The medical and social history of the birth parent, including an assessment regarding the birth parent's understanding and acceptance of the ~~proceedings~~ action.
4. If the child has been born ~~prior to~~ before the filing of the report, a medical and developmental history of the child.

**SECTION 3. AMENDMENT.** Section 14-15.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**14-15.1-06. Fees and charges.** Reasonable fees may be charged for professional services ~~relating to the petition for relinquishment, placement of the child, and other pre-adoption services, medical care or services, prenatal costs, foster care, or other reasonable items of cost or expense if reflected in a report of agreements and disbursements filed under this chapter and approved by the court and living expenses if reflected in a report of agreements and disbursements filed under this chapter and approved by the court.~~ The fees may not be contingent upon placement of the child for adoption, consent to adoption, or cooperation in the completion of adoption. "Reasonable fees" may include:

1. Preplacement counseling, adoption assessment, placement of the child, foster care, or other preadoption services, which must be paid directly to the provider of the services;
2. Legal fees relating to the petition for relinquishment or adoption, which must be paid directly to the provider of the services;
3. Medical expenses relating to prenatal care and the birth of the child, which are not already covered by health insurance;
4. Expenses for transportation, meals, and lodging incurred for placement of the child or in order to receive counseling, legal, or medical services related to the pregnancy, birth, or placement; and
5. Living expenses of the birth mother which are needed to maintain an adequate standard of living, which the birth mother is unable to otherwise maintain because of loss of income or other support resulting from pregnancy. Payments may cover expenses incurred during the pregnancy related incapacity but not for a period longer than six weeks following the delivery unless the court determines within the six-week

period that the birth mother is unable to be employed due to physical limitations relating to the birth of the child. Living expenses do not include expenses for lost wages, gifts, educational expenses, vacations, or other similar expenses of a birth mother.

**SECTION 4. AMENDMENT.** Section 14-15.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**14-15.1-07. Adoption petition - Time limit for filing.**

1. Within ~~ninety~~ one hundred eighty days after entry of an order for relinquishment under this chapter, the identified adoptive parent shall file a petition for adoption under chapter 14-15 or the statutes of the adopting parent's state of residence. A copy of the petition to adopt must be filed with the department. Reports relating to postplacement supervision must be filed with the court hearing the adoption. The resulting decree of adoption, if so ordered by the court, must be filed with the department.
  
2. If no petition for adoption is filed within ~~ninety~~ one hundred eighty days, the department shall notify the court. The court shall then set a hearing to determine whether the child's placement should be changed.

Approved March 17, 2003

Filed March 17, 2003

## CHAPTER 128

### SENATE BILL NO. 2034

(Legislative Council)  
(Family Law Committee)

## UNIFORM PARENTAGE ACT REVISIONS

AN ACT to amend and reenact sections 14-17-01 and 14-17-03, subsection 1 of section 14-17-04, subsection 1 of section 14-17-05, and sections 14-17-08 and 14-17-24 of the North Dakota Century Code, relating to the Uniform Parentage Act.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 14-17-01 of the North Dakota Century Code is amended and reenacted as follows:

**14-17-01. Parent and child relationship defined.** As used in this chapter, "parent and child relationship" means the legal relationship existing between a child and the child's ~~natural~~ biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

**SECTION 2. AMENDMENT.** Section 14-17-03 of the North Dakota Century Code is amended and reenacted as follows:

**14-17-03. How parent and child relationship established.** The parent and child relationship between a child and:

1. The ~~natural~~ biological mother may be established by proof of having given birth to the child, or under this chapter.
2. The ~~natural~~ biological father may be established under this chapter.
3. An adoptive parent may be established by proof of adoption under ~~the Revised Uniform Adoption Act~~ chapter 14-15.

**SECTION 3. AMENDMENT.** Subsection 1 of section 14-17-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A man is presumed to be the ~~natural~~ biological father of a child if:
  - a. The man and the child's ~~natural~~ biological mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;
  - b. Before the child's birth, that man and the child's ~~natural~~ biological mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

- (1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred days after its termination by death, annulment, declaration of invalidity, or divorce; or
  - (2) If the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;
- c. After the child's birth, that man and the child's ~~natural~~ biological mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
- (1) The man has acknowledged the man's paternity of the child in writing filed with the division of vital statistics of the state department of health;
  - (2) With the man's consent, that man is named as the child's father on the child's birth certificate; or
  - (3) The man is obligated to support the child under a written voluntary promise or by court order;
- d. While the child is under the age of majority, the man receives the child into the man's home and openly holds out the child as the man's ~~natural~~ biological child;
- e. The man acknowledges the man's paternity of the child in a writing filed with the division of vital statistics of the state department of health, which shall promptly inform the mother of the filing of the acknowledgment, and the mother does not dispute the acknowledgment within a reasonable time after being informed ~~thereof~~ of the acknowledgment, in a writing filed with the division of vital statistics of the state department of health. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted; or
- f. If genetic tests show that the man is not excluded and the statistical probability of the man's parentage is ninety-five percent or higher.

**SECTION 4. AMENDMENT.** Subsection 1 of section 14-17-05 of the North Dakota Century Code is amended and reenacted as follows:

1. A child, the child's ~~natural~~ biological mother, or a man presumed to be the child's father under subdivision a, b, or c of subsection 1 of section 14-17-04, may bring an action:
  - a. At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision a, b, or c of subsection 1 of section 14-17-04; or
  - b. For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision a, b, or c of subsection 1 of section 14-17-04 only if the action is brought within

a reasonable time after obtaining knowledge of relevant facts, but in no event later than five years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if that man has been made a party.

**SECTION 5. AMENDMENT.** Section 14-17-08 of the North Dakota Century Code is amended and reenacted as follows:

**14-17-08. Parties.** The child must be made a party to the action. A child who is a minor must be represented by the child's parent whose parentage has been established under section 14-17-03 or a guardian ad litem appointed by the court. The court may appoint the director of the county social service board as guardian ad litem for the child. The ~~natural~~ biological mother, each man presumed to be the father under section 14-17-04, and each man alleged to be the ~~natural~~ biological father, must be made parties or, if not subject to the jurisdiction of the court, must be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

**SECTION 6. AMENDMENT.** Section 14-17-24 of the North Dakota Century Code is amended and reenacted as follows:

**14-17-24. Proceeding to terminate parental rights.**

1. If a mother relinquishes or proposes to relinquish for adoption a child who does not have (a) a presumed father under subsection 1 of section 14-17-04, (b) a father whose relationship to the child has been determined by the court, or (c) a father as to whom the child is a legitimate child under ~~prior~~ previous law of this state or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.
2. In an effort to identify the ~~natural~~ biological father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry must include the following: whether the mother was married at the time of conception of the child or at any time ~~thereafter~~ after conception; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared that man's possible paternity of the child.
3. If, after the inquiry, the ~~natural~~ biological father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each must be given notice of the proceeding in accordance with subsection 5. If any of them fails to appear or, if appearing, fails to claim custodial rights, that man's parental rights with reference to the child must be terminated. If the ~~natural~~ biological father, or a man representing himself to be the ~~natural~~ biological father, claims custodial rights, the court shall proceed to determine custodial rights.

4. If, after the inquiry, the court is unable to identify the ~~natural~~ biological father or any possible ~~natural~~ biological father and no person has appeared claiming to be the ~~natural~~ biological father and claiming custodial rights, the court shall enter an order terminating the unknown ~~natural~~ biological father's parental rights with reference to the child. Subject to the disposition of an appeal, upon the expiration of thirty days after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.
5. Notice of the proceedings must be given to every person identified as the ~~natural~~ biological father or a possible ~~natural~~ biological father in the manner appropriate under the rules of civil procedure for the service of process in a civil action in this state or in any manner the court directs. Proof of giving the notice must be filed with the court before the petition is heard. If no person has been identified as the ~~natural~~ biological father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner ~~the~~ the court deems appropriate.
6. A termination of parental rights ordered under this section does not terminate the duty of either parent to support the child ~~prior to~~ before the child's adoption unless that duty is specifically terminated by order of the court after notice of a proposed termination or relinquishment is given to the department of human services in the manner appropriate for the service of process in a civil action in this state.

Approved March 7, 2003

Filed March 7, 2003